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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 521

BROWN LAND AND ROYALTY COMPANY
Petitioner

versus

FRANCES CLARK GREEN ET ALS
Defendants

PETITION FOR CERTIORARI

TO THE HONORABLE THE SUPREME COURT
OF THE UNITED STATES

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OPINIONS BELOW

The opinion of the Court of Appeals is not yet officially reported but a copy thereof appears in the record at Page 139.

GROUND FOR INVOKING JURISDICTION

The ground for invoking the jurisdiction of this Court is that the decision of the United States Court of Appeals in this case is in conflict with the decision of this Court in *Hazel-Atlas Glass Company vs. Hartford Empire Company*, 322 U.S. 238.

The decision of the Court of Appeals sought to be reviewed was rendered on July 22, 1955 (Record Page 129) a rehearing was timely applied for (Record Pages 140-141) and the Court of Appeals made its action final by denying such application on September 14, 1955 (Record Page 142).

That Paragraph 1 of Section 1254 of Title 28, of the U.S.C.A. confers jurisdiction on your Honors in this case.

QUESTION PRESENTED

The question presented here is whether the Court of Appeals should have allowed this petitioner to file its petition in the United States District Court where a showing is made that petitioner was prevented from presenting its case by the deception, chicanery, and wrong doing of the heirs of Calvin E. Clark (defendants here) and it is shown that the result of the case would have been favorable to petitioner had it been in a position to fully present its case. The subsidiary question in the case is whether or not the decisison of the Court of Appeals was correct in failing to follow and be bound by Your Honors decision in *Hazel-Atlas Glass Co. vs. Hartford Empire Co.*, supra.

STATUTES INVOLVED IN THE DISPOSITION OF THIS APPLICATION

There is no statute involved in this application. What is involved is the power and duty of the Court of Appeals to grant relief against a judgment secured as a

result of deception and wrongdoing. The same situation was presented in the *Hazel-Atlas* case and this power and duty upheld. That a copy of the ruling of the Court of Appeals is annexed hereto as an appendix.

STATEMENT OF THE CASE

On February 24, 1950, the defendants in this cause, other than The Texas Company, instituted a suit against the present petitioner in the 18th Judicial District Court of the State of Louisiana, which suit was removed by present petitioner to the United States District Court for the Eastern District of Louisiana where petiioner answered asserting title in itself to the property involved, relying upon a mineral deed executed by Mrs. Marie M. Clark and two written instruments executed by the present defendants. A motion to dismiss present petitioner's claim was granted by the District Judge for the Eastern District of Louisiana and his action was affirmed by the United States Court of Appeals for the Fifth Circuit (Record Page 3-4, Inclusive).

On February 20, 1953, present petitioner instituted a suit against the same parties in the State Court claiming the title to the same property but on the ground that the defendant Clark heirs had accepted their mother's succession and become bound by her warranty, which claim had not been pleaded in the Federal Court suit (Record Page 7-8, Inclusive), the fact of such acceptance not being known to petitioner at that time (Record Pages 6-7, Inclusive), because of the wrongdoing and deception of pre-

sent defendants. The Louisiana District Judge sustained exceptions of res adjudicata and no cause or right of action. The Supreme Court of Louisiana affirmed the action of the District Judge insofar as the exception of res adjudicata was concerned.

REASON FOR GRANTING THE WRIT

The Circuit Court of Appeals gave no reason for its refusal to permit petitioner to file its petition. It could not be that it felt the State Court judgment to be res adjudicata because that judgment was predicated solely upon the Federal Court judgment now under attack. Therefore we must surmise that the Court of Appeals felt either that it had no power to do so or that there was lack of diligence of the part of this petitioner. But Your Honors have already disposed of these questions in the *Hazel-Atlas* case, supra, squarely stating that tampering with the administration of justice involves far more than an injury to a single litigant, it being a wrong against institutions set up to protect the public. The denial of petitioner's application by the Court of Appeals allows defendants to profit by their own wrongdoing. If this petitioners allegations be true, it is abundantly clear that defendants have successfully used a State Court of Louisiana in concealing from this petitioner facts which would have enabled it to secure justice. Although the property involved in this litigation is valuable that fact does not make this case important. The case is, however, important because the question is whether a litigant can successfully tamper with the judicial process with im-

punity. We believe that the gravity of the matters involved here justify intervention by this Court and the granting of the writ sought. To refuse this application would allow a fraud to stand.

The question presented is substantial because of the conflict between Your Honors' ruling in the *Hazel-Atlas* case and the ruling here and by reason of the nature of the case.

CONCLUSION

For the foregoing reasons we suggest that the petition for a writ of certiorari should be granted.

BROWN LAND & ROYALTY CO.
By its attorney:

.....

ROBERT G. CHANDLER
918 Commercial Bldg.

APPENDIX A

ORDER DENYING MOTION FOR LEAVE TO FILE PETITION TO SET ASIDE JUDGMENT FILED JULY 22, 1955.

Extract from the Minutes of July 22, 1955.

Nos. 13688 and 13826

BROWN LAND & ROYALTY COMPANY, INC.,

versus

FRANCES CLARK GREEN, ET AL.

After full consideration of the Motion of Brown Land & Royalty Company for Leave to file a Petition to Set Aside the Judgment in the above entitled and numbered causes together with the Petition attached thereto, and the exhibits, and the briefs filed in support of and in opposition thereto; the Court has concluded that that Petition for Leave to File should be denied; and it is therefore,

ORDERED AND ADJUDGED by this Court that the Motion of Brown Land & Royalty Company for Leave to File a Petition to Set Aside the Judgment in the above entitled and numbered causes be, and the same is hereby. DENIED.

FILED
DEC 12
HAROLD B. WILLEY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 521

BROWN LAND & ROYALTY COMPANY, INC.,
Petitioner

versus

FRANCES CLARK GREEN, ET ALS.,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeal for the Fifth Circuit

BRIEF OF RESPONDENTS, FRANCES CLARK GREEN, ET ALS., IN OPPOSITION TO THE PETITION FOR CERTIORARI

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BRIEF OF RESPONDENTS, FRANCES CLARK GREEN, ET ALS., IN OPPOSITION TO THE PETITION FOR CERTIORARI

To the Honorable the Supreme Court of the United States:

OPINIONS BELOW

(Rule 40-a)

Petitioner's statement on this point is technically correct respecting the order of the Court of Appeal sought to be reviewed.

However, it is suggested that in failing to append to its petition copies of the opinions in the companion cases of *Brown*

Land & Royalty Co., Inc. v. Green, et al., 198 F. 2d 74, cert. den. 73 S. Ct. 335, and *Brown Land & Royalty Co., Inc. v. Pickett, et al.*, 226 La. 88, 75 So. 2d 18, cert. den. 75 S. Ct. 341, reh. den. 75 S. Ct. 437, and in failing even to give their citations, petitioner failed to comply with Rule 23 (1) (a) and Rule 23 (1) (i) of the Rules of this Court.

Respondents have not appended copies of the opinions in those cases to this opposing brief for as we comprehend Rule 40 (1) (a) and Rule 40 (3) as construed with Rule 24 (1) it is proper for us only to refer to the reports of the opinions and not to append copies of them.

This prior protracted litigation shows that petitioner simply seeks to relitigate a question already decided between the same parties—title to the same Louisiana real estate.

In fact, the petition which Brown Land & Royalty Co., Inc., sought leave to file was a petition to annul and set aside the judgment in the case of *Brown Land & Royalty Co., Inc. v. Green, et al.*, supra, and the reason advanced was the same as that which was at issue and decided adversely to petitioner in *Brown Land & Royalty Co., Inc. v. Pickett, et al.*, supra.

GROUND FOR INVOKING JURISDICTION (Rule 40-b)

Respondents deny petitioner's claim that the Court of Appeal failed to consider and abide by the legal principles of *Hazel-Atlas Glass Company v. Hartford Empire Company*, 322 U. S. 238.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ETC.

(Rule 40-c)

Petitioner refers to none.

QUESTION PRESENTED

(Rule 40-d)

Petitioner states that the question is whether the Court of Appeal should have allowed the filing of a petition where it is claimed that a showing was made that petitioner was prevented from presenting its case by the deception, chicanery, and wrong doing of respondents and where it is alleged that a showing was made that the result of the case would have been favorable to petitioner had it been in a position to fully present its case; that a subsidiary question is whether or not the Court of Appeal was correct in allegedly having failed to follow the *Hazel-Atlas Glass Co. v. Hartford Empire Company* case, supra.

Respondents do not agree with some of petitioner's factual statements, and do not agree that such questions are presented.

The Per Curiam opinion of the United States Court of Appeal for the Fifth Circuit gave these reasons for its order:

> "After **full consideration of the Motion** of Brown Land & Royalty Company for Leave to File a Petition to Set Aside the Judgment in the above entitled and numbered causes **together with the Petition attached thereto, and the exhibits, and the briefs filed in support of and in**

> **opposition thereto;** the Court has concluded that the Petition for Leave to File should be denied. . . ." (Emphasis supplied.)

It is perfectly plain that the Court of Appeal concluded—contrary to what petitioner has alleged in page 2 of its petition—that the result of the case would **not** have been favorable to petitioner if the motion for leave to file the proposed petition had been granted and if all of the well pleaded facts set out therein had been fully proved. That point was fully briefed to the Court of Appeal, as shown by the briefs and opposing briefs in the record. We shall not here repeat the legal reasons why petitioner could not have prevailed even if it had been allowed to file its petition and could have proved all facts alleged in it. Those reasons are fully set out, and ample authority cited to support them, in the opposition. A copy of that opposition is in the record here for study by this Court. The Court of Appeal thoroughly canvassed those reasons and manifestly agreed with some or all of them.

And it is perfectly clear that, contrary to failing to follow the opinion of this Court in the *Hazel-Atlas Glass Co. v. Hartford Empire Company* case, supra, the Court of Appeal gave full weight to that opinion. Having fully considered every argument advanced, the Court concluded that as a matter of law petitioner could have gained nothing whatever if granted leave to file its petition.

STATEMENT OF THE CASE
(Rule 40-e)

The first paragraph of petitioner's "Statement of the Case" (See petition for certiorari, page 3) is technically cor-

rect as far as it goes, but omits the statement that under Louisiana Law, as plaintiff asserting title in itself, petitioner had the burden of establishing its title, and that after full consideration the Court of Appeal concluded that plaintiff's alleged ancestor in title never had any title to convey.

In the second paragraph of its "Statement of the Case," pages 3-4 of the petition for certiorari, petitioner's statements are in part technically correct but, we submit, not complete. The District Court Judge in the State Court suit, in an extensive written opinion considering all pertinent Louisiana Jurisprudence, concluded that even if as a matter of fact the Clark heirs had accepted their mother's succession, nevertheless under Louisiana law, this did not, and could not, establish title to real estate in petitioner, whose ancestor in title had already conclusively been adjudicated to have had no title.

Further, the Supreme Court of Louisiana has unequivocally held that all of the claimed facts upon which petitioner now relies rather than, as petitioner asserts, "not being known to petitioner at that time," were in fact known or should have been known to petitioner and its counsel. Speaking through its Chief Justice, in *Brown Land & Royalty Company, Inc. v. Pickett, et al.* (La. Supreme Court 7-2-54, Reh. Den. 10-5-54) 226 La. 88, 75 So. 2d 18, at page 20, the Supreme Court of Louisiana said:

> ". . . the record in the instant case discloses that at the time the former suit was instituted in March of 1950, the succession of Mrs. Clark had been judicially opened, that counsel for appellant was aware of that fact, and had, following full disclosure of requisite information upon which this issue could or should have been based during a conference with opposing counsel shortly after the insti-

tution of the suit, instigated a token investigation of the matter for the purpose of ascertaining whether Mrs. Clark's children had in fact tacitly accepted her succession, although he made no attempt by supplemental petition to present this issue squarely to the court; . . ."

ARGUMENT

(Rule 40-g)

Apparently petitioner suggests as reasons for granting certiorari that (1) the Court of Appeal did not consider petitioner's motion because it felt that it had no power to do so, or (2) the Court of Appeal deliberately ignored and refused to follow the reasoning of this Court in the case of *Hazel-Atlas Glass Co. v. Hartford Empire Company*, supra.

It is submitted that neither contention of petitioner finds support in the record. A copy of respondents' opposition which was filed in the Court of Appeal is before this Court, and it shows that respondents did not deny that the Court of Appeal in a proper case, did have the power to grant a motion such as petitioner presented here. It seems strange indeed that petitioner would suggest to this Court, in view of the statement by the Court of Appeal that it did give "full consideration" to the motion and the proposed petition, that the Court of Appeal felt that it had no power to consider the motion.

The Court of Appeal by its very order showed that it did consider that it did have such power, and showed that it did exercise that power.

Petitioner's other point fares no better. It was not disputed by respondents, in opposing petitioner's motion in the

Court of Appeal, that the decision in the case of *Hazel-Atlas Glass Co. v. Hartford Empire Company*, supra, was good law on the facts of that case. No one has challenged the principles of law set out there.

But we did urge then and we urge now that the *Hazel-Atlas* case does not mean that a Motion for Leave to File a Petition to Set Aside a Judgment should be granted where it is conclusively apparent that if the petition should be filed and if all the well pleaded facts set out therein should be established, the result would not and could not be changed.

The true basis for the denial of the Motion for Leave to File obviously was that granting the motion and permitting the filing of the petition could not and would not lead to a different result. Many reasons were set out, with full citation of authorities, in the opposition filed by respondents in the Court of Appeal. In that opposition, respondents posed the true question as follows:

> "We meet Brown head-on on this proposition,—conceding every well-pleaded fact urged by Brown to be true, and considering this latest motion and proposed petition in the light of extensive prior litigation between these same parties, could Brown succeed in establishing **its own title** to Louisiana realty in this petitiory action? We submit that the answer is 'No', and that the motion for leave to file should be denied."

"Full consideration" of the motion, the proposed petition, all exhibits, all briefs in support of the motion and petition and in opposition thereto, was accorded, according to the specific words of the Court of Appeal, by three members of that Court.

One of those three was Honorable Wayne G. Borah, a Louisiana trained attorney and Judge, who for many years presided as District Judge in the Eastern District of Louisiana, and who for many years has served on the Court of Appeals for the Fifth Circuit. Questions involving the Civil Law, in some respects exclusively applicable in Louisiana as distinguished from common law states, were presented. Certainly Judge Borah and the other members of the Court were fully aware of these problems and took full cognizance of them.

The Judges who considered this matter certainly did not act lightly. The final reply brief, filed by petitioner here, was filed on or about June 29, 1955. The decision of the Appellate Court was rendered July 22, 1955. The Court of Appeals obviously must have concluded that the granting of the motion for Leave to file the Proposed Petition should be denied because even if all of the well pleaded facts set out in the proposed petition could be established, still Brown Land & Royalty Company, Inc., could not, under Louisiana law, carry the burden (voluntarily assumed by it) of establishing title to this Louisiana realty.

CONCLUSION

(Rule 40-h)

It is submitted that the record, including the opposition of respondents filed in the Court of Appeals, and the order of that Court, show that the Court of Appeals felt that it had the power to consider the motion and to grant it if proper. The record further shows that the Court of Appeals did consider the proposed petition and all briefs filed in support of and in opposition to the motion for Leave to File the Petition,

and concluded that this litigation should not be still longer protracted because petitioner here could not succeed even if every well pleaded fact in its proposed petition were true.

It is perfectly plain that—contrary to petitioner's statement here to the effect that respondents are being allowed to profit by their own alleged wrong doing—the Court of Appeals rightfully concluded that under Louisiana law, the alleged acceptance of respondents' mother's succession, even if true, could not possibly change the result. As the Court well knew, this is so under Louisiana law because petitioner, Brown Land & Royalty Company, Inc., voluntarily assumed the burden of establishing title to Louisiana real estate, and petitioner could not possibly sustain that burden even if all the facts alleged by it could be established.

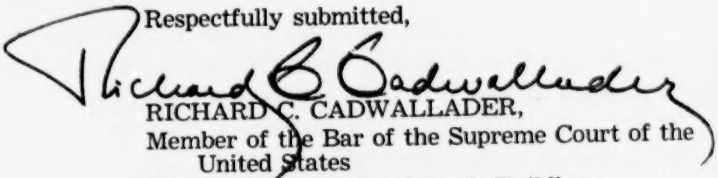
Petitioner suggests, page 4-5 of the petition for certiorari, that ". . . the question is whether a litigant can successfully tamper with the judicial process with impunity." That is not now and has never been the question in this case. We remark, parenthetically, that even petitioner does not suggest that there was ever any tampering with the process of any Federal Court, to which Court petitioner here itself removed the first case filed between these parties.

But conceding *arguendo* only, that something wrong is alleged by petitioner to have been done in the handling of a succession many years ago, in a Louisiana State Court, even if that should be true petitioner could take nothing thereby. That precise complaint was made by petitioner here in a Louisiana State Court proceeding after petitioner had lost its first case and after this Court had denied certiorari. That precise complaint was rejected by a Louisiana District Judge, and his

judgment dismissing petitoner's suit was affirmed by the Louisiana Supreme Court and again your Honors denied certiorari. No showing of any change in the facts has been made since that time.

It is respectfully submitted, that, for the above reasons and those fully set forth in respondents' opposition in the Court of Appeals, the decision of the Court of Appeals denying the Motion for Leave to File a Proposed Petition was properly entered, and that the petition for certiorari should be denied.

Respectfully submitted,



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Calvin E. Hardin, Jr.
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Wallace A. Hunter,
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CERTIFICATE OF SERVICE

I hereby certify that three copies of the above and foregoing brief have this day been served upon counsel for petitioner by mailing same, postage prepaid, to Robert G. Chandler, Esquire, Attorney at Law, 918 Commercial Building, Shreveport, Louisiana, Attorney of record for petitioner.

Baton Rouge, Louisiana, this 8th day of December, 1955.

Richard C. Cadwallader

RICHARD C. CADWALLADER,
Counsel for Respondents above named.